

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

<b>JOHN L. CRAYTON</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No.: 2:07-cv-626-MEF</b>
	)	
<b>ALABAMA DEPARTMENT OF AGRICULTURE &amp; INDUSTRIES,</b>	)	<b>(LEAD CASE)</b>
	)	
<b>Defendant.</b>	)	

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<b>JOHN L. CRAYTON</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No.: 2:07-cv-1111-MEF</b>
	)	
<b>ALABAMA DEPARTMENT OF AGRICULTURE &amp; INDUSTRIES,</b>	)	<b>(MEMBER CASE)</b>
	)	
<b>Defendant.</b>	)	

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION FOR LEAVE TO SUBMIT  
AMENDED AFFIDAVIT IN OPPOSITION TO SUMMARY JUDGMENT**

COMES NOW the Defendant Alabama Department of Agriculture & Industries and submits the following Opposition to Plaintiff’s Motion for Leave to Amend his Affidavit submitted in opposition to Defendant’s Motion for Summary Judgment. (Doc. 28-2). As grounds therefor, Defendant would show as follows:

1. The Defendant filed its Motion for Summary Judgment, supporting Brief and Evidence on May 30, 2008. (Docs. 16, 17, 18).

2. On June 3, 2008, this court set the Defendant's summary judgment for submission on June 24, 2008, with Plaintiff's brief in opposition due on June 17, 2008 and Defendant's Reply Brief due June 24, 2008. (Doc. 19).

3. On June 18, 2008, the plaintiff filed a Motion for Extension of Time to submit his Response in Opposition to Defendant's Motion for Summary Judgment. (Doc. 20). This Court granted the plaintiff an extension of time to June 23, 2008 with Defendant's Reply Brief due June 30, 2008. (Doc. 21).

4. The plaintiff filed his Response in Opposition to Defendant's Motion for Summary Judgment on June 23, 2008 and attached thereto his affidavit. (Docs. 23, 24).

5. Defendant filed its Summary Judgment Reply Brief and Motion to Strike plaintiff's affidavit on June 30, 2008. (Docs. 25, 26). On July 15, 2008, this court ordered the Plaintiff to show cause on or before July 21, 2008 as to why Defendant's Motion to Strike should not be granted. (Doc. 27).

6. On July 21, 2008, the plaintiff filed a pleading entitled "Plaintiff's Response to Defendant's Motion to Strike Portions of Plaintiff's Affidavit Submitted in Opposition to Motion for Summary Judgment". (Doc. 28). In his response, the plaintiff does not oppose Defendant's Motion to Strike; he simply states that he "had edited her (sic) affidavit in accordance with Rule 56(e) of the Federal Rules of Civil Procedure and will edit her (sic) Response to Defendant's Motion for Summary Judgment accordingly." (Doc. 28). The plaintiff attached thereto a Motion for Leave to Amend Affidavit claiming again that he "has edited said affidavit in accordance with Rule 56(e) of the Federal Rules of Civil Procedure." (Doc. 28-2). Thus, the Defendant's Motion to Strike stands unopposed.

7. Plaintiff not only requests leave to amend his affidavit, he asserts that he “will edit her (sic) Response to Defendant’s Motion for Summary Judgment accordingly”. (Doc. 28).

8. To allow the plaintiff to amend his affidavit and his summary judgment response at this late date would prejudice the Defendant. The Defendant’s Motion for Summary Judgment, Brief in Support thereof and evidentiary materials were all submitted almost two months ago on May 30, 2008. The plaintiff already received one extension from this Court to submit his Response to Defendant’s Motion for Summary Judgment. (Doc. 21). The Defendant submitted a Reply to Defendant’s Response. (Doc. 25). Defendant, in all likelihood, would need to file a reply to any amended response submitted by the Plaintiff. The pretrial conference is currently set for August 28, 2008. Any further amendments to Plaintiff’s submissions on summary judgment could delay resolution of the matters currently before the court.

9. Despite Plaintiff’s claim that he has edited his affidavit in accordance with Rule 56(e) of the Federal Rules of Civil Procedure, a review of the proposed edited affidavit attached to his Motion to Amend reveals otherwise. The proposed amended affidavit contains inadmissible hearsay, opinion, and bald conclusions without supporting facts. Thus, the amended affidavit contains deficiencies similar to those in the original affidavit and if submitted, would necessitate a separate motion to strike by the Defendant.

WHEREFORE, the foregoing premises considered, the Defendant respectfully requests this Honorable Court deny Plaintiff’s Motion to Amend his Affidavit.

/s/ Emily C. Marks  
EMILY C. MARKS

/s/ E. Hamilton Wilson, Jr.  
E. HAMILTON WILSON, JR.  
Attorneys for the Defendant

OF COUNSEL:

BALL, BALL, MATTHEWS & NOVAK, P.A.

2000 Interstate Park Drive, Suite 204

Post Office Box 2148

Montgomery, Alabama 36102-2148

Phone: (334) 387-7680

Fax: (334) 387-3222

**CERTIFICATE OF SERVICE**

I hereby certify that on July 24, 2008, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system which will send notification of such filing to the following:

Juraldine Battle-Hodge  
207 Montgomery St., Ste. 215  
Montgomery, AL 36104-3528

/s/ Emily C. Marks

OF COUNSEL